DE COTTA v. TAN HOCK LEE

[C. A. (Chua, Choor Singh and Tan Ah Tah JJ.)

August 2, 1972]

[Singapore — Civil Appeal No. 37 of 1971]

Negligence — Contributory negligence — Duty of care of one motorist following another — Quantum of damages.

This appeal arose from a claim for damages for personal injuries sustained by the respondent and said to have been caused by the negligence of the appellant in the driving of a motor vehicle on April 23, 1970. The trial court gave judgment for the respondent in the sum of $76,624 and costs.

The respondent, who was driving a motor scooter, collided into the rear offside corner of a van driven by the appellant, as a result of the appellant pulling up suddenly. Just before the accident, the respondent was travelling at 30 miles per hour and was about 30 feet behind the appellant's van. The respondent applied his brakes and took evasive action, but without success.

The appeal was against the trial judge's finding that there was no contributory negligence on the part of the respondent. The complaint was that on the respondent's own version of the accident, which was accepted by the learned Chief Justice, there was evidence of contributory negligence on the part of the respondent. The submission was that the respondent was negligent in that he failed to carry out his duty as the driver of a motor vehicle following another motor vehicle.

Held, allowing the appeal: (1) the real reason for the respondent being unable to avoid colliding with the van when it suddenly pulled up, was that he was travelling too close behind the van. The distance of 30 feet which separated the two vehicles was not a safe distance in the circumstances of this case. A reasonable prudent man riding a motor scooter at 30 miles per hour would have kept much farther away from the van because it is impossible for a scooter travelling at that speed to pull up in 30 feet; in the circumstances of this case, the respondent owed a duty to the appellant to move with due care, and on his own evidence, he was clearly in breach of that duty;

(2) there was contributory negligence on the part of the respondent and he must bear his proper share of responsibility for the injury sustained by him. Having regard to all the circumstances of this case, the respondent's responsibility must be assessed at 40% and that of the appellant 60%. Accordingly the respondent was only entitled to recover $45,974. The respondent must pay the appellant the costs of the appeal.

Observations on (a) the duty of the driver of a motor vehicle which is following another motor vehicle, and (b) the concept of contributory negligence.

Cases referred to:-

(1) *Brown & Lynn* v. *Western S.M.T. Co. Ltd.* [1945] S.C. 31.

(2) *Davies* v. *Swan Motor Co. (Swansea) Ltd.* [1949] 2 K.B. 291.

(3) *Nance* v. *British Columbia Electric Railway Co. Ltd.* [1951] 2 All E.R. 448.

COURT OF APPEAL.

S. Rajkumar for the appellant.

R. Ramason for the respondent.

Choor Singh J. (delivering judgment of the court): This appeal arises from a claim for damages for personal injuries sustained by the respondent and said to have been caused by the negligence of the appellant in the driving of a motor vehicle along New Changi Road, Singapore on the 23rd April 1970. The trial of the action resulted in judgment being given for the respondent on the 23rd September 1971 in the sum of $76,624 and costs. The appellant now appeals against the said judgment. The appeal is a limited one and is only against the trial judge's finding that there was no contributory negligence on the part of the respondent.

The facts according to the respondent's version which was accepted by the learned Chief Justice who tried this action are these. The respondent, a young man not yet 21 at the date of the accident was riding a motor scooter along New Changi Road towards the city. He was following a Morris Minor van driven by the appellant. Just before the accident the respondent was travelling at 30 miles per hour and was about 30 feet behind the appellant's van when the appellant suddenly pulled up. The respondent applied his brakes and took evasive action by swerving to the right but without success. His scooter collided into the rear offside corner of the van. He did not fall off at the point of impact but went forward another 10 feet before he fell from the scooter. His scooter finished up 58 feet from the point of impact. The respondent explained that this was due to the fact that he did not attempt to bring his scooter to a dead stop. He did not do that because he wanted to take evasive action and also because a dead stop might overturn his scooter.

The reason given by the appellant for pulling up was that he saw a tortoise on the road, about a foot from the grass verge. After passing the tortoise he slowed down, gave a hand signal that he was slowing down and came to a gradual stop about two or three feet from the left edge of the road. His intention was to get the tortoise off the road. He denied that he pulled up suddenly.

At the conclusion of the trial, the learned Chief Justice delivered an oral judgment and made the following finding: —

"I have no doubt whatsoever after hearing and seeing the witnesses before me whose evidence I accept based on credibility and demeanour. I just do not accept the defendant's evidence at all. The probabilities of the case clearly also indicate that the plaintiff's evidence as to how the accident happened is more probable but I base my judgment on the fact that I accept the plaintiff's evidence and I disbelieve the defendant. So, clearly the accident happened because I find the defendant applied his brakes suddenly, gave no indication whatsoever that he was going to do this, as it turned out, not only a stupid act but a negligent act with serious consequences for the plaintiff, all because of a tortoise which he found crawling along the road in front of him.

There is no point in my repeating all the evidence. Finding as I do there can be no contributory negligence on the part of the plaintiff merely because he was travelling at a speed of 30 miles an hour following the defendant who was travelling at the same speed and staying at a distance of 30 feet behind the defendant on this particular stretch of the road at this particular time of the day and with the traffic as it was at the time of the collision...."

Before us, there is no complaint regarding the finding of negligence on the part of the appellant. The complaint is that on the respondent's own version of the accident, which was accepted by the learned Chief Justice, there was evidence of contributory negligence on the part of the respondent. The submission is that the respondent was negligent in that he failed to carry out his duty as the driver of a motor vehicle following another motor vehicle and a number of authorities were cited in support of this submission.

Observations on the duty of the driver of a motor vehicle which is following another motor vehicle have been made in many reported cases. In *Brown & Lynn* v. *Western S.M.T. Co. Ltd.*,[1] Lord Justice-Clerk (Cooper) said, at page 35:—

"... The distance which should separate two vehicles travelling one behind the other must depend upon many variable factors — their speed, the nature of the locality, the other traffic present or to be expected, the opportunity available to the following driver of commanding a view ahead of the leading vehicle, the distance within which the following vehicle can be pulled up, and many other things. The following driver is, in my view, bound, so far as reasonably possible, to take up such a position, and to drive in such a fashion, as will enable him to deal successfully with all traffic exigencies reasonably to be anticipated: but whether he has fulfilled this duty must in every case be a question of fact, just as it is a question of fact whether, on any emergency disclosing itself, the following driver acted with the alertness, skill and judgment reasonably to be expected in the circumstances...."

And a little earlier, on the same page, the Lord Justice-Clerk had this to say:—

"... The conduct of the leading driver will, of course, have an important bearing upon liability for an accident in every case in which the conduct of both drivers is put in issue, either by a plea of contributory negligence or by double allegations of fault. But the duty of the following driver is a continuous duty which persists independently of any actual emergency or of the leading driver's reaction to such emergency, and the question whether the following driver has failed in his duty cannot depend upon whether the leading driver had fulfilled his."

The authorities show that negligence ordinarily means breach of a legal duty to take care, but when contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued and all that is necessary to establish such a defence is to prove that the injured party did not in his own interest take reasonable care of himself and contributed, by this want of care, to his own injury. In *Davies* v. *Swan Motor Co. (Swansea) Ltd.*,[2] Bucknill L.J. said at page 308:—

"... When one is considering the question of contributory negligence, it is not necessary to show that the negligence constituted a breach of duty to the defendant. It is sufficient to show lack of reasonable care by the plaintiff for his own safety. That is set out clearly in the speech of Lord Atkin in *Caswell* v. *Powell Duffryn Associated Collieries, Ltd.*, [1940] A.C. 152, 164 as follows:—

'But the injury may be the result of two causes operating at the same time, a breach of duty by the defendant and the omission on the part of the plaintiff to use the ordinary care for the protection of himself or the property that is used by the ordinary reasonable man in those circumstances ....'"

The concept of contributory negligence was examined and clarified by the Privy Council in *Nance* v. *British Columbia Electric Railway Co., Ltd.*[3] where the decision in *Davies'* case was considered and applied but certain observations of Denning L.J. were criticised. Dealing with the concept of contributory negligence, Viscount Simon, who delivered the judgment of the Board, said, at page 450:—

"... The statement that, when negligence is alleged as the basis of an actionable wrong, a necessary ingredient in the conception is the existence of a duty owed by the defendants to the plaintiff to take due care, is, of course, indubitably correct. But when contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued and all that is necessary to establish such a defence is to prove to the satisfaction of the jury that the injured party did not in his own interest take reasonable care of himself and contributed, by this want of care, to his own injury. For when contributory negligence is set up as a shield against the obligation to satisfy the whole of the plaintiff's claim, the principle involved is that, where a man is part author of his own injury, he cannot call on the other party to compensate him in full. This view of the matter has recently been expounded, after full analysis of the legal concepts involved and careful examination of the authorities, by the English Court of Appeal in *Davies* v. *Swan Motor Co. (Swansea), Ltd.* [1949] 1 All E.R. 620, to which the Chief Justice referred. This, however, is not to say that in all cases the plaintiff who is guilty of contributory negligence owes to the defendant no duty to act carefully. Indeed, it would appear to their Lordships that in cases relating to running-down accidents like the present such a duty exists. The proposition can be put even more broadly. Generally speaking, when two parties are so moving in relation to one another as to involve risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles, or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle. If it were not so, the individual on foot could never be sued by the owner of the vehicle for damage caused by his want of care in crossing the road, for he would owe to the plaintiff no duty to take care. Yet such instances may easily occur, e.g. if the individual's rashness causes the vehicle to pull up so suddenly as to damage its mechanism, or as to result in following traffic running into it from behind, or, indeed, in physical damage to the vehicle itself by contact with the individual. When a man steps from the kerb into the roadway, he owes a duty to traffic which is approaching him with risk of collision to exercise due care...."

The observation by Denning L.J. in the *Davies'* case, that —

"When a man steps into the road, he owes a duty to himself to take care for his own safety, but he does not owe to a motorist who is going at an excessive speed any duty to avoid being run down."

was expressly rejected by the Board. Viscount Simon stated that "their Lordships cannot agree with it".

We do not consider it necessary to examine any of the other authorities cited to us by counsel for the appellant. On the facts of this case, as found by the learned Chief Justice, we have to ask ourselves this plain common sense question: "Did the respondent contribute to his injury by following a motor van on his scooter at a distance of 30 feet behind the motor van when both vehicles were travelling at the same speed of about 30 m.p.h. on an open country road with very little traffic on it?" It is common ground that the road at the scene of the accident slopes downwards. It is also conceded that it is dangerous for a scooterist to jam his brakes and come to a dead stop because he may overturn. And according to *Bingham's* Motor Claims Cases, 6th edition, page 86, two wheel vehicles require double the distance required by a four wheel vehicle to pull up. For a four wheel vehicle, travelling at 30 m.p.h. the distance in which it can pull up is 75 feet which figure is made up of a "thinking distance" of 30 feet and a "braking distance" of 45 feet. It follows that for a scooter travelling at 30 m.p.h. the distance required to pull up will be 30 + 90 *i.e.* 120 feet. The respondent knew or should have known that by following the motor van 30 feet behind it at 30 m.p.h. he could not in an emergency stop suddenly without endangering his own life. The respondent should therefore have allowed more room between the vehicle ahead of him and his scooter.

It is contended on behalf of the respondent that a distance of 30 feet between the two vehicles was sufficient and safe in the circumstances of this case. If 30 feet was a safe distance to remain behind the vehicle ahead of the respondent, then what is the explanation for the collision? The sudden stopping of the appellant's motor van created an emergency for the respondent. He applied his brakes, took evasive action by swerving to the right and yet collided with the motor van and his scooter finished up 58 feet ahead of the van. Three possible inferences can be drawn from these facts on the assumption that 30 feet was a safe distance. First, that the respondent was driving without due care and attention and hence was late in taking preventive measures to avoid the collision. Secondly, that he was travelling at a speed in excess of 30 m.p.h. And thirdly, that he was travelling less than 30 feet behind the van. In our opinion, the real reason for the respondent being unable to avoid colliding with the van when it suddenly pulled up, was that he was travelling too close behind the van. The distance of 30 feet which separated the two vehicles was not a safe distance in the circumstances of this case. A reasonable prudent man riding a motor scooter at 30 m.p.h. would have kept much further away from the van because it is impossible for a scooter travelling at that speed to pull up in 30 feet. Quite apart from the fact that the respondent did not in his own interest take reasonable care of himself and contributed by this want of care to his own injury, the respondent in the circumstances of this case owed a duty to the appellant to move with due care and on his own evidence he was clearly in breach of that duty.

In our judgment, there was contributory negligence on the part of the respondent and he must bear his proper share of responsibility for the injury sustained by him. Having regard to all the circumstances of the case, we assess the respondent's responsibility at 40 per cent and that of the appellant at 60 per cent. Accordingly the respondent is entitled to recover from the appellant only 60 per cent of $76,624 *i.e.* $45,974. The respondent will pay the appellant the costs of this appeal. The deposit of $500 is to be paid out to the solicitors for the appellant.

Appeal allowed. Order accordingly.

Solicitors: *Donaldson & Burkinshaw; R. Ramason.*

SITHAMBARAN v. ATTORNEY-GENERAL

[O.C.J. (Tan Ah Tah J.) August 12, 1972]

[Singapore — Suit No. 2251 of 1970]

Administrative Law — Declaration — Whether dismissal from Police Force was ultra vires, null, void and inoperative — When subordinate officers can be represented by agent at a disciplinary inquiry — Whether plaintiff given a reasonable opportunity to be heard — Authority having power to dismiss in the Singapore Police Force — Police Regulations, 1959 reg. 7 — Constitution of Malaysia, Art. 135(2) — Police Force Ordinance, 1958, ss. 4(1), 54.

The plaintiff in this action sought for a declaration that his purported dismissal from the Singapore Police Force was *ultra vires,* null, void and inoperative, and that he was still a corporal and entitled to be remunerated as such.

It was argued on his behalf, *inter alia*: (1) that he was not permitted to be represented by an agent at the disciplinary inquiry; (2) that he was not given reasonable opportunity of being heard before he was dismissed; (3) that an Assistant Commissioner of Police had no power to dismiss him. It was contended that only the Commissioner had the power to dismiss the plaintiff. Counsel for the defendant submitted that under section 4(1) of the Police Force Ordinance, 1958, an Assistant Commissioner of Police had the power to dismiss the plaintiff.

Held: (1) regulation 7 of the Police Regulations, 1959, is silent on the question whether subordinate officers can be represented by anyone at an inquiry. On the authority of *Enderby Town Football Club Ltd.* v. *The Football Association Ltd.*,[1] the chairman of the inquiry had a discretion whether or not to allow the plaintiff to be represented by someone at the inquiry. But as the plaintiff on his own admission never raised the matter, the question of an exercise of discretion never arose;

(2) the plaintiff was given a reasonable opportunity of being heard before he was dismissed. There had been no contravention of Article 135(2) of the Constitution of Malaysia;

(3) section 4(1) of the Police Force Ordinance, 1958 did not confer on the Commissioner the power to delegate any of his powers. The effect of section 4(1) is that any act which may be done by the Commissioner may, subject to orders and directions, be done by an Assistant Commissioner of Police. The right of the Commissioner to give orders and directions is controlled by section 54 of the Police Force Ordinance, 1958, which provides, *inter alia,* that the Commissioner may make such orders not inconsistent with the provisions of the Ordinance as he may think expedient. Therefore, section 4(1) of the Ordinance conferred the power on the Assistant Commissioner of Police to dismiss the plaintiff from the Police Force.

Cases referred to:-

(1) *Enderby Town Football Club Ltd.* v. *The Football Association Ltd.* [1971] 1 All E.R. 215.

(2) *Attorney-General, Singapore* v. *Ling How Doong* [1969] 1 M.L.J. 154.

(3) *V.C. Jacob* v. *Attorney-General* [1970] 2 M.L.J. 133.

(4) *Government of the Federation of Malaya* v. *Surinder Singh Kanda* [1961] M.L.J. 121.

SUIT.

J. B. Jeyaretnam for the plaintiff.

Warren Khoo Leang Huat, (State Counsel) for the Attorney-General.

Cur. Adv. Vult.

Tan Ah Tah J.: The plaintiff joined the Singapore Police Force as a constable on or about the 3rd May 1954. On the 1st August 1960 he was promoted to the rank of lance corporal. Subsequently, on the 1st June 1964 he was promoted to the rank of corporal.